IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Prafool Chand & Others Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.154/2002)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 30-1-2002 in Sessions Case No.102/2001 passed by Sh. Prabod Vasistha, RHJS, Additional Sessions Judge (Fast Track) No.1, Kota.

Date of Judgment: March 08, 2007.

PRESENT
HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. S.R.Bajwa, Senior Advocate] for the appellants.
Mr. V. R. Bajwa]
Ms. Rajesh Kandwal]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Prafool Chand, Kaushalya Devi and Rakesh, the appellants herein, were put to trial before learned Additional Sessions Judge (Fast Track) No.1, Kota, who vide judgment dated January 30, 2002 convicted and sentenced them as under:-

U/s.304B IPC:
Each to undergo rigorous imprisonment for seven years.

U/s.498A IPC:
Each to undergo two years rigorous imprisonment and fine of Rs.500/- in default fifteen days simple imprisonment.

U/s.4 Dowry Prohibition Act:
Each to undergo six months rigorous imprisonment and fine of Rs.300/- in default seven days simple imprisonment.

The substantive sentences were ordered to run concurrently.

2. The informant Purshottam Khandelwal (Pw.8) submitted a written report at Police Station Vigyan Nagar Kota on January 21, 1992 with the averments that his daughter Sangeeta (since deceased) was married to appellant Rakesh on November 27, 1991. He alleged that his daughter was harassed for insufficient dowry. One of his relative informed him on January 20, 1992 about death of his daughter, he reached Kota and came to know that on January 19, 1992 his daughter and her husband went to market where they purchased a betel-leave (Pan), through which poison had been administered to his daughter. On that report case was registered and investigation commenced. Dead body was subjected to autopsy. Statements of witnesses were recorded. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1 Kota. Charges under sections 498A, 304B and 120B IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 13 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. Nine witnesses in defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. I have heard learned counsel for the parties and with their assistance weighed the material on record.

4. Learned counsel for the appellants made following submissions:-

(i) The letter (Ex.P-7) could not have been relied on without obtaining the opinion of the Hand-writing Expert.

(ii) Further the letter Ex.P-7 differed from letters Ex.D-5 and Ex.D-6.

(iii) The letter Ex.P-7 does not find mention in the FIR or the statements of witnesses recorded under section 161 CrPC.

(iv) The letter Ex.P-7 was presented by one Pushpendra Kumar but he was not examined by the prosecution.

(v) Chemical Analysis Report (Ex.P-14) was inadmissible evidence.

(vi) Dr. Y.K.Sharma (Pw.13) clearly opined that because of Aluminium Phosphate there could be very bad smell, but on opening the body no bad smell was found therefore no definite opinion about cause of death could be given.

(vii) The trial court held that prosecution failed to establish the demand of dowry, therefore harassment of deceased for dowry could not have been inferred.

(viii) Informant Purshottam Khandelwal lodged the report on the basis of information supplied by a neighbour of the deceased but that person has not been examined by the prosecution.

(ix) The story of the informant chewing of betel-leave was not believed by the trial court still the appellants have been convicted.

5. Coming to the evidence adduced at the trial I notice that Sangeeta died just within two months of her marriage under abnormal circumstances. A look at the Post mortem report (Ex.P-12) shows that no

opinion of cause of death was given. Viscera was sent for chemical examination. Vide Chemical Examination Report (Ex.P-14) it was opined that packet A1 gave positive tests for the presence of Aluminium Phosphate. The first version stated in the report was based on the information supplied by a relative of informant. Conjoint reading of statements of prosecution witnesses however shows that possibly Sangeeta was dragged to such a situation by her husband that she opted to commit suicide.

6. The expression `dowry' is defined by Section 2 of the Dowry Prohibition Act,1961 (for short `the Act'), as meaning anything which is given either directly or indirectly, by one party to a marriage to the other party to the marriage or by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person" at or before or after the marriage as consideration for the marriage of the said parties. The act has been amended by Act 63 of 1984 and Act 43 of 1986. Formerly dowry was defined as property given as consideration for the marriage but the words "as consideration for the marriage" have been omitted and substituted by the words "in connection with the marriage". Now dowry means any property given or agreed to be given by the parents of a party to the marriage at marriage or before marriage or at any time after marriage in connection with the marriage.

7. Considering the definition of dowry their Lordships of Supreme Court in Reema Aggarwal Vs. Anupam (2004)3 SCC 199, indicated thus:-

(Para 14)

"The definition of the term "dowry" under Section 2 of the

> Dowry Act shows that any property or valuable security given or "agreed to be given" either directly or indirectly by one party to the marriage to the other party to the marriage "at or before or after the marriage" as a "consideration for the marriage of the said parties" would become "dowry" punishable under the Dowry Act. Property or valuable security so as to constitute "dowry" within the meaning of the Dowry Act must, therefore, be given or demanded "as consideration for the marriage".

8. Interpreting the words "in connection with the marriage of the said parties", the Apex court in Satvir Singh Vs. State of Punjab (2001)8 SCC 633, propounded as under:-

> "The word "dowry" in Section 304-B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act,1961. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is "at any time" after the marriage. The third occasion may appear to be an unending period. But the crucial words are "in connection with the marriage of the said parties". This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies prevalent in different societies. Such payments are not enveloped within the ambit of "dowry".
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> (Emphasis supplied)

9. The word "agreement" referred in Section 2 has also been considered in Pawan Kumar Vs. State of Haryana (1998)3 SCC 309, by their Lordships of Supreme Court and it was observed as under:-

(Para 16)

> "Demand for dowry neither conceives nor would conceive of any agreement. The word "agreement" referred to in Section 2 of the Dowry Prohibition Act,1961 has to be inferred on the

> facts and circumstances of each case. The interpretation that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or talking dowry and Section 4 which deals with penalty for demanding dowry, under the 1961 Act and the Indian Penal Code. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. This leads to the inference, when persistent demands for TV and scooter are made from the bride after marriage or from her parents, it would constitute to be in connection with the marriage and it would be a case of demand of dowry within the meaning of Section 304-B IPC. It is not always necessary that there be any agreement for dowry."

10. That takes me to the question as to whether the appellants have committed the dowry death of Sangeeta? Section 113-B of the Evidence Act provides that when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

11. Analysing the words `soon before her death their Lordships of the Supreme Court in Kamesh Panjiyar Vs. State of Bihar (2005)2 SCC 388, held as under:-

> "A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that "soon before her death", the victim was subjected to cruelty or harassment "for or in connection with the demand of dowry". Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before her death" is very relevant where

> Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. “Soon before” is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test as indicated by the said expression both for the proof of an offence of dowry death as well as for raising a presumption under section 113-B of the Evidence Act. A reference to the expression “soon before” used in Section 114 illustration (a) of the Evidence Act is relevant. The determination of the period which can come within the term “soon before” under section 114 illustration (a) is left to be determined by the courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression “soon before” would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effects of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.”
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> (Emphasis supplied)

12. In K.Prema S.Rao Vs. Yadla Srinivasa Rao (AIR 2003 SC 11) their Lordships of Supreme Court examined the words `soon before her death' and observed as under:-

> “To attract the provisions of S.304-B, IPC, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty and harassment `in connection with the demand for dowry'. There is no evidence on record to show that the land was demanded as a dowry. It was given by the father to the deceased in marriage ritual as “pasupukumuma”. The harassment or cruelty meted out

> to the deceased wife by the husband after the marriage to force her to transfer the land in his name was `not in connection with any demand for dowry'. One of the main ingredients of the offence of “demand of dowry” being absent in this case, the accused could not be said to have committed offence under S.304-B.”

13. A bare look at the evidence on record to show that the harassment or cruelty meted by the deceased was not in connection with any demand of dowry. Bust since the deceased died just within two months of her marriage is a material to prove that before her death Sangeeta was subjected to cruelty or harassment for or in connection with the demand of dowry. Existence of a proximate and live link between the effects of cruelty based on demand and the death is missing. Sangeeta met with the death because appellants husband and his mother treated her cruelly. Clause (a) of the Explanation under section 498-A IPC defines cruelty to mean a “willful conduct of the husband of such nature as is likely to drive the woman to commit suicide”. In the instant case it is established from the ocular and documentary evidence that the appellants harassed and treated Sangeeta cruelly. As a result of such cruel treatment Sangeeta was driven to meet the suicidal death. Thus offence of abetment of committing suicide punishable under section 306 IPC is clearly made out against appellants husband Rakesh and Mother-in-law Kaushalya Devi and for that purpose presumption under section 113-A of the Evidence Act can be raised against them. Section 306 IPC and Section 113-A Evidence Act read thus:-

> “306: Abetment of suicide.- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to file.”

> “113-A: Presumption as to abetment of suicide by a married woman.- When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.
> Explanation- For the purposes of this section cruelty shall have the same meaning as in section 498A of the Indian Penal Code (45 of 1860).”

14. From the material on record it is evident that appellants are guilty of cruel treatment of deceased, as a result of which she was forced to die within two months of the marriage. On such evidence the presumption which arises under section 113-A of the Evidence Act is that the husband and mother in-law of deceased abetted her to commit suicide. The word `cruelty' as mentioned in the Explanation below Section 113-A of the Evidence Act has been given the same meaning contained in the Explanation below Section 498A IPC. On the facts established, the willful conduct of appellants in neglecting and harassing the deceased was so cruel that she was driven to commit suicide and the offence of abetment of committing suicide, punishable under section 306 IPC is proved against appellants Rakesh and Kaushalya Devi. I am of the view that charges under sections 498A IPC and Section 4 Dowry Prohibition Act are also proved against the appellants.

15. Although charge under section 306 IPC was not framed against appellants Rakesh and Kaushalya Devi but omission to frame charge under section 306 IPC has not resulted in any failure of justice. In Hira Lal Vs.

State (Govt.of NCT) Delhi (2003)8 SCC 80, their Lordships of Supreme Court in a similar situation observed as under:-

> "Though no charge was framed under section 306 IPC, that is inconsequential. On the facts of the case, even though it is difficult to sustain the conviction under section 304-B IPC, there is sufficient material to convict the accused-appellants in terms of Section 306 IPC along with Section 498A IPC"

16. For these reasons, I dispose of instant appeal in the following terms:-

(i) Appeal of appellant Prafool Chand stands abated since he died on December 23, 2006.

(ii) Appeal of appellants Kaushalya Devi and Rakesh is partly allowed and instead of section 304B IPC, I convict each of them under section 306 IPC and sentence them to suffer rigorous imprisonment for a period of 5 years and fine of Rs.1000/- in default to suffer one month simple imprisonment. I however confirm their conviction and sentence under section 498A IPC and Section 4 of Dowry Prohibition Act. Since the appellants Kaushalya Devi and Rakesh Kumar have already suffered confinement for a period of more than five years and two months and they are in jail, I direct that they shall be set at liberty forthwith, if not required to be detained in any other case.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Shiv Kumar Sharma)J.

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